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2  
3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
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8 UNITED STATES OF AMERICA,

Case No. CR12-0052 EMC

9 Plaintiff,

10 v.

**SECOND AMENDED PRETRIAL  
ORDER FOR CRIMINAL JURY TRIAL  
AND BRIEFING SCHEDULE**

11 ANTHONY McGEE,

12 Defendant.  
13 \_\_\_\_\_/

14  
15 Good cause appearing, it is hereby ordered that:

16 1. TRIAL DATE

17 a. Jury trial is **rescheduled** from 1/14/13 to **2/19/13** in Courtroom 5, 17th Floor,  
18 450 Golden Gate Avenue, San Francisco, California. Typical court day for trial is 8:30 a.m. to 2:00  
19 p.m.; **Thursdays** are dark.

20 b. The length of trial is expected to last not more than **five (5) court days**.

21 2. DISCOVERY

22 Both sides will comply with the Federal Rules of Criminal Procedure and Criminal  
23 Local Rule 16-1. The United States will comply with *Brady v. Maryland*, 373 U.S. 83 (1963),  
24 *Giglio v. United States*, 405 U.S. 150 (1972) and *United States v. Agurs*, 427 U.S. 97 (1976).

25 3. MOTIONS

26 a. The final hearing on Defendant's motion to suppress was held on 10/3/12,  
27 following a prior hearing and in camera examination of three officers and review of two rounds of  
28 briefing. The Court denied Defendant's motion for reasons stated on the record.

1 b. Pretrial motions (including motions *in limine*) shall be noticed and set for hearing on  
2 **2/5/13 at 2:30 p.m.** The briefing schedule for all motions shall comply with Criminal Local Rule  
3 47-2.

4 c. The time for the government's disclosure under Criminal Local Rule 16-1(c) has  
5 passed.

6 4. PRETRIAL CONFERENCE

7 a. A pretrial conference will be held on **2/5/13 at 2:30 p.m.** The attorneys who  
8 will try the case shall attend the conference and be prepared to discuss the matters set forth in  
9 Criminal Local Rule 17.1-1.

10 b. Not less than three (3) weeks before the Pretrial Conference, the parties shall,  
11 consistent with defendant's right to an effective defense, complete the following:

12 (1) Serve and file a pretrial statement pursuant to Crim. L.R. 17.1-1(b).

13 (2) Serve and file a trial brief setting forth the following:

14 (a) A description of each offense charged in the case.

15 (b) A description of all of the relevant facts upon which the parties  
16 stipulate.

17 (c) A brief description of the law applicable to each alleged  
18 offense, including, but not limited to, a listing of the elements  
19 of each alleged offense and affirmative defense and any  
20 instructions that the Court should consider in reaching a  
21 decision in the case.

22 (d) Points of law on any other issues relevant to the trial, including  
23 all foreseeable procedural and evidentiary issues.

24 (3) Serve and file a joint exhibit list in tabular form, with (a) a column that  
25 briefly describes the exhibit; (b) a column that describes for what  
26 purpose the party will offer the exhibit and identifies its sponsoring  
27 witness; (c) a column that states any objections to the exhibit; (d) a  
28 column that briefly responds to the objections; and (e) a blank column

1 for the Court's use. Before this list is filed with the Court, the parties  
2 shall meet and confer, in person, to consider exhibit numbers, to  
3 eliminate duplicate exhibits and confusion over exhibits, and to make  
4 a good faith effort to stipulate to admissibility. If stipulation is not  
5 possible, the parties shall make every effort to stipulate to authenticity  
6 and foundation absent a legitimate (not tactical) objection.

- 7 (4) Serve and file a list of the witnesses that each party intends to call at  
8 the trial in its case-in-chief, not including rebuttal witnesses, briefly  
9 setting forth for each witness the substance of their testimony.
- 10 (5) Exchange exhibits, which shall be pre-marked (The government shall  
11 use numbers; defendant shall use non-duplicative consecutive numbers  
12 as agreed in advance) and tabbed.
- 13 (6) Deliver two (2) binders of all pre-marked exhibits to chambers  
14 (exhibits are not to be filed). *Exhibits must be premarked. In*  
15 *addition, one set of exhibits must be tagged.* Exhibits shall be three-  
16 hole punched and shall be submitted in binders. Sample tags are  
17 attached as Exhibit A hereto.
- 18 (7) Serve and file proposed jury instructions on all substantive issues and  
19 on any procedural issue not adequately covered by the Court's  
20 standard instructions (i.e. the Ninth Circuit Manual of Model Criminal  
21 Jury Instructions (2003 ed. as amended through 2006) (also available  
22 on the Ninth Circuit website at [www.ce9.uscourts.gov](http://www.ce9.uscourts.gov)) shall be given  
23 absent objection: 1.1-1.12, 2.1-2.2, 3.1-3.2, 3.5-3.9, 7.1-7.6.
- 24 (a) Any instruction contained in the Ninth Circuit Model  
25 Instructions Manual may be requested by designation of its  
26 number.
- 27  
28

- 1 (b) Each other instruction shall be requested by setting forth the  
2 instruction in full text on a separate sheet with reference to  
3 supporting legal authority.
- 4 (c) Prior to filing the proposed instructions, the parties shall meet  
5 and confer and work in good faith towards a stipulated set of  
6 instructions. If a full agreement is not reached, the parties shall  
7 enumerate the instructions on which an agreement is reached  
8 and then list separately the additional instructions proposed by  
9 each party.
- 10 (8) Serve and lodge a proposed form of verdict and proposed questions for  
11 jury voir dire. Voir dire questions not agreed to shall be listed  
12 separately.
- 13 c. Not less than one (1) week prior to the Pretrial Conference, the parties shall:
- 14 (1) Serve and file any formal objections to the opposing party's witnesses.  
15 As to objections to exhibits on the exhibit list, the objecting party shall  
16 set forth a detailed basis for each objection. Failure to do so shall be  
17 deemed a waiver.
- 18 d. No party shall be permitted to call any witness or offer any exhibit in their  
19 case in chief that is not disclosed pursuant to this Pretrial Order, without leave of Court for good  
20 cause shown, subject to defendant's right to an effective defense.
- 21 e. All motions *in limine* shall be noticed in accordance with Criminal Local Rule  
22 47-2 and heard at the Pretrial Conference.

23 5. CHALLENGES

24 The procedure for exercising peremptory challenges in Criminal Local Rule 24-1 will  
25 be observed absent objection by the parties.

26 6. COPIES

27 Each document filed or lodged with the Court must be accompanied by a copy for use  
28 in the Judge's chambers.

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7. CHANGE OF PLEA

Counsel shall give prompt notice to the United States Attorney and to the Court of any intention to change a previously entered not guilty plea. A written plea agreement must be submitted at least one (1) day in advance of the plea.

8. Jury instructions, proposed form of verdict, and requested voir dire shall also be submitted to Chambers in Word or WordPerfect format on a floppy disk.

Dated: December 3, 2012



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EDWARD M. CHEN  
United States District Judge

**JUROR QUESTIONNAIRE**

- 1.
2. Name.
3. City of residence.
4. Occupational status.
5. Organizations.
6. Hobbies.
7. Marital status.
8. Spouse's occupation.
9. Children (including ages).
10. If a juror on another case.
11. If ever a grand juror.
12. If ever in the military.

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case Number:

PLTF / DEFT EXHIBIT NO. \_\_\_\_\_

Date Admitted: \_\_\_\_\_

By: \_\_\_\_\_

Betty Lee, Deputy Clerk

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